HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 476 (S/S) 2004

Rambali S/o Mangat Singh,
R/o village Beerun,
P.S. Sarsawa,
District Saharanpur U.P. ----Petitioner.

Vs.

1. State of Uttaranchal, through,
   Secretary,
2. S.S.P. Office Haridwar through S.S.P.,
   District Haridwar,
3. Smt. Mukesh W/o late Rishipal,
   R/o Police Chauki, Sauth B, P.S.
   Gang Nehar, Roorkee,
   District Haridwar. ----Respondents.

Sri S.K. Jain, learned counsel for the petitioner.
Sri Sharad Sharma, learned counsel for respondent no. 3.
Learned counsel for respondent no. 1 & 2.

Hon'ble M.M. Ghildiyal, J.

Heard Sri S.K. Jain, learned counsel for the petitioner, Sri Sharad Sharma, learned counsel for the respondent no. 3 and learned Standing Counsel who has accepted notice for the respondent nos. 1 & 2.

This writ petition has been filed by the father of the deceased Rishipal, who was posted as Head Constable and died in a road accident on 07.04.2004, with the prayer to issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 i.e. the Senior Superintendent of Police, Haridwar to pay the entire arrears of provident fund, other entire allowances such as group insurance, gratuity, arrears of salary and the amount of recurring deposit scheme of the deceased Rishipal to the petitioner.

Learned Standing Counsel has filed counter affidavit. In para-3A of the counter affidavit, the respondents have stated

that the son of the petitioner was recruited on 01.10.1979 as Constable in district Haridwar. At the time of recruitment, he was unmarried, as such, he entered his father's name i.e. the petitioner as the nominee in the service record. The recruitee Rishipal expired on 7th April 2004 in a road accident and after his death the wife of the deceased Smt. Mukesh who is the respondent no.3 in the present writ petition, moved an application on 21.04.2004 for payment of post retiral dues of her deceased husband but the same could not paid to her as the petitioner was shown as the nominee and the records was to be verified. After verifying the records and after inquiry was conducted, it was found that the wife of the deceased i.e. Smt. Mukesh who is respondent no. 3 in the present writ petition, is alive and there is no dispute regarding her being alive. In the circumstances, the post retiral dues of the deceased Rishipal could not be paid to the petitioner. Being the legal heir, the respondent no. 3 shall be paid the post retiral dues of the deceased.

Learned counsel for the petitioner placed reliance on the judgment of **Hon'ble Supreme Court, reported in AIR 1984 Smt. Sarbati Devi and another vs. Smt. Usha Devi, page 346** wherein in para-12, the Hon'ble Apex Court has held that *"A mere nomination made under Section 39 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorize to receive the amount, on the payment of which is insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them".*

The Hon'ble Supreme Court in the aforesaid case has held that the amount can be claimed by the heirs of the assured in accordance with law of succession, governing them.

Accordingly, the department shall make payment of retiral dues of the deceased to the legal heirs of the deceased in accordance with law. The writ petition is disposed of finally.

(M.M. Ghildiyal, J.)

August 23, 2005:
NCM: